

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of**

**COMMUNICATIONS WORKERS OF )  
AMERICA, AFL-CIO and LOCAL 463, )  
INTERNATIONAL BROTHERHOOD OF )  
ELECTRICAL WORKERS, )**

**Complainants,**

**v.**

**KENTUCKY ALLTEL,**

**Defendant.**

**RECEIVED**

SEP 19 2003

PUBLIC SERVICE  
COMMISSION

**Case No. 2003-00190**

**COMPLAINANTS' STATUS REPORT**

COME NOW Complainants Communications Workers of America, AFL-CIO, and IBEW Local 463, and pursuant to the Commission's Order of August 20, 2003, provides this report "regarding the status of the parties' positions on each of the alleged violations." Order at p. 2. As described more fully below, it is Complainants' position that the alleged violations are continuing, and due to be addressed by the Commission.

1. Status of CWA/Alltel Collective Bargaining Agreement: In its Motion to Dismiss and Response, Alltel notes that the collective bargaining agreement and memoranda of agreement between it and CWA expired June 7, 2003. By operation Section 8(a)(5) of the National Labor Relations Act, 29 U.S.C. § 158(a)(5), however, all terms and conditions of the agreement and memoranda survive expiration until such time as a new agreement is reached or the parties reach a legitimate impasse in bargaining. See, e.g., Exxon Co., USA, 313 NLRB 542 (1993); see also Laborers Health & Welfare Trust Fund v. Advanced Lightweight Concrete Co., 484 U.S. 539 (1988); NLRB v. Katz, 369 U.S.

736 (1962); Paperworkers v. NLRB, 981 F.2d 861 (6<sup>th</sup> Cir. 1992). No new agreement has been reached, nor are the parties at impasse. A contract proposal is in the process of being considered by the CWA-represented employees for ratification, with voting ending October 2, 2003. CWA is making no recommendation to the employees regarding the proposed contract.

2. Preemption of Commission Jurisdiction: Complainants disputes Alltel's suggestion that the Commission's jurisdiction to decide the issues raised by the Complaint is preempted by federal law. The issue raised by the Complaint is Alltel's compliance with the Commission's order of February 13, 2002. State regulation of utilities is a "sensitive area of social policy into which a federal court should not intrude unnecessarily." IBEW Local 1245 v. Public Service Commission of Nevada, 614 F.2d 206, 212 (9<sup>th</sup> Cir. 1980). In that case, the court abstained from exercising jurisdiction over a question of whether the National Labor Relations Act preempted the Nevada PSC from deciding issues implicating a collective bargaining agreement pending resolution of the issues before the Commission. Id. at 213. Similarly, in Southwestern Bell Telephone Co. v. Arkansas Public Service Commission, 824 F.2d 672 (8<sup>th</sup> Cir. 1987), found that the NLRA did not preempt the Arkansas PSC's jurisdiction over the effect of collectively-bargained wage rates on the utilities' operating expenses. Complainants herein are not seeking the Commission's interpretation of their agreements with Alltel; they seek enforcement of the Commission's February 13, 2002 order directing Alltel's compliance with those agreements.

3. Alltel's Violation of the Commission's Order: Certain contentions included in Alltel's Response to the Complaint which are material to the Complaint are disputed by Complainants. Complainants refer the Commission to the Declarations of Judy Dennis and Johnny Hunt regarding Alltel's breaches of the parties' agreements:

– Phone Marts: As described in the Declaration of Judy Dennis, whether or not there was an agreement between CWA and Alltel as to changes in terms and conditions of employment for Phone Mart employees is disputed

– Living Benefit: CWA’s position is that the obligation to provide the “living benefit” survives expiration of the parties’ agreement; and that, while administration of the benefit is left to the insurance carrier, provision of the benefit is not discretionary

– Medical Plan: As described in the Dennis Declaration, CWA relied on representations made by Alltel prior to the effective date of the transfer from Verizon regarding the availability of other medical plans

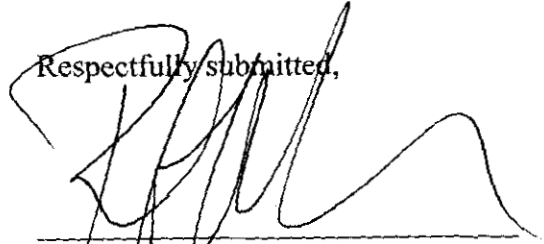
– Team Incentive Program & Contract Labor: Alltel’s violations of the memorandum of agreement (TIP) and collective bargaining provisions regarding subcontracting are described in the Dennis Declaration. While grievances and unfair labor practice charges are pending over these matters, the direct issue raised by the Complaint is Alltel’s compliance with the Commission’s order.

– Personal Lines of Insurance: Local 463’s position is that while administration of the benefit is left to discretion of Alltel and the insurance carrier, provision of the benefit is not discretionary

– Grievance Procedures: Again, CWA submits that the issue is not the substance of any particular grievance, or CWA’s decision not to escalate a grievance to higher steps of the procedure or to arbitration; CWA retains the right not to escalate a particular grievance based on its view of the merits, and Alltel is not prejudiced by CWA’s decision to withdraw a grievance. The issue before the Commission is Alltel’s compliance with the grievance procedure, by which CWA’s ability to process grievances is prejudiced

In light of the foregoing, Complainants submit that a procedural schedule should issue in order that Commission address the merits of the Complaint and consider enforcement of the February 13, 2002 order.

Respectfully submitted,



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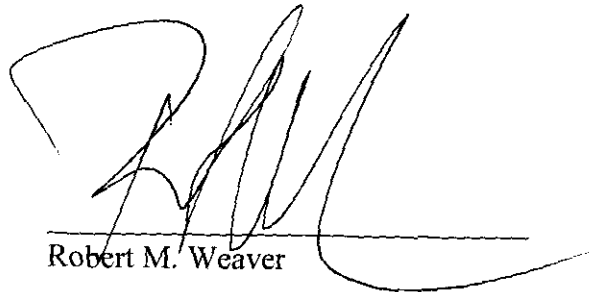
Robert M. Weaver, Esq.

Nakamura, Quinn & Walls LLP  
Suite 130, 2004 Lakeshore Drive  
Birmingham, AL 35209  
205/870-9989  
205/803-4143

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing was served on the parties listed below by placing a true and correct copy, properly addressed and first class postage prepaid, in the U.S. Mail this the 18th day of April, 2003:

Noelle M. Holladay, Esq.  
Wyatt, Tarrant & Combs, LLP  
Suite 1600, 250 West Main Street  
Lexington, KY 40507-1746



Robert M. Weaver